

CHAPTER 74 FOOD PEDDLERS

TABLE

74-1 Vehicular Food Peddlers

74-1. Vehicular Food Peddlers.

1. FINDINGS. The common council findsthat regulation of the health conditions of food sold by food peddlers is necessary for the prevention of disease and sickness within Milwaukee and such regulation is vital to the health, safety and welfare of residents of and visitors to the city.

1.5. DEFINITIONS. In this chapter:

a. "Commissioner" means the commissioner of health.

b. "Food" means all articles used for food, drink or condiment including ice or water used by humans, whether simple, mixed, or compound and articles used or intended for use as ingredients in the composition or preparation thereof.

c. "Food peddler" means any person who sells food in this city from a pushed, pedaled, pulled or motorized vehicle or from a carried container.

d. "Person" means any individual, firm or corporation.

2. PERMIT REQUIRED. a. **Parked One Hour or Less.** No person shall engage in the sale of any food from any vehicle on public streets, without first receiving from the commissioner of health a permit so to do; provided further that any person engaged in the sale of any food from a vehicle shall not remain in any location adjacent to any one block area, which block contains only nonresidential occupancy or use, more than one hour on any one day, except as provided in sub. 2-b. This section, and the permits issued thereunder, shall not permit any person to sell food from a temporary or permanent structure or a vehicle other than a vehicle selling food on public streets or contrary to any other ordinance of the city.

b. **Special Permit, Over One Hour.** Whenever any street or portion thereof has been closed to traffic by common council resolution in connection with any civic event, the city clerk may, upon receipt of the required fee, issue a permit to any person holding a permit for the sale of food from a vehicle

further permitting such person to park on such closed streets longer than the one hour limit provided in sub. 2-a. The permit shall specify the dates for which issued and the fee required in ch. 60 shall be charged for each such date. No such permit shall be issued without the approval of the chief of police, unless the common council by resolution shall so direct.

c. **Location of Vehicle: Penalty.**

c-1. The number of vehicles at any given event, in any given block, and the spacing of such vehicles, as well as the number of blocks within the closed traffic section allocated for such vehicles, shall be determined by the police department in cooperation with the local alderman and sponsoring group.

c-2. Any vehicle parking in such a closed traffic section, or parking outside the barricaded street section longer than allowed by existing ordinances, without said permit shall be fined \$100 and vehicle shall be towed away at owner's expense.

d. **Exceptions.** The common council may, by resolution, designate specific exceptions as to locations, dates and/or individual events, to the provisions of sub. 2-a.

2.2. PERMIT NOT REQUIRED. A person selling only bottled or canned water or bottled or canned soda and no other food items is not required to have a permit issued under this section but must comply with all other requirements of this section.

2.5. SALES FROM MEDIAN OR SAFETY ISLAND PROHIBITED. No food peddler shall sell or offer for sale any food while the person is on a roadway median or safety island, except when the roadway has been closed to traffic under sub. 2-b and the peddler is otherwise in compliance with this section.

3. PERMIT CATEGORIES. a. **Pushed, Peddled or Pulled Vehicles.** A food peddler permit shall be issued by the commissioner of health upon the payment of the fee required in s. 60-29 for each approved pushed, peddled or pulled vehicle which does not have a mechanical engine to propel it, and shall be in such form as the commissioner of health may direct.

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b. **Motorized Vehicle.** The food peddler permit fee required in s. 60-29 shall be charged for each approved motorized vehicle and shall be in such form as the commissioner of health may direct.

c. **Carried Containers.** The food peddler permit fee required in s. 60-29 shall be charged for each person who carries food on foot for retail sale.

d. **Veteran.** Any ex-soldier of the United States in any war who has a 25% disability or more or has a cardiac disability recognized by the United States veterans administration shall, upon presenting proof to the commissioner of health that he or she satisfies these conditions, be granted a food peddler permit without payment of any fee.

4. **IDENTIFYING DEVICE (LICENSE PLATE).** Together with each permit, the commissioner shall issue an identifying device not less than 4" x 8" in size and having stamped on it the words "Milwaukee Health Department - permit no.....," which shall be numbered in such manner as directed by the commissioner. Any food peddler, before engaging in the sale of any food products, shall have the identifying device securely fastened to the outer or inside right side of the peddler's vehicle or container and prominently display it at all times. Each peddler shall at all times have on his or her person the paper permit whose number matches the number on the identifying device.

4.5. **COMPANY NAME.** Effective October 1, 1996, each side of the vehicle shall display the name of the person to whom the permit is issued, and local telephone number in lettering not less than 4 inches high.

5. **APPLICATION.** Each person requiring a permit shall make written application therefor to the commissioner of health on blanks provided therefor and shall personally present this application at a place to be designated by the commissioner of health.

6. **PERMIT SUSPENSION AND REVOCATION.** a. Any permit issued in accordance with this section is subject to summary revocation by the commissioner or any of the commissioner's authorized agents at any time that the holder thereof is guilty of a violation of any of the provisions of this code or state laws governing the sale or handling of food. Any person to whom such an order is issued shall immediately comply therewith, but upon written petition to the commissioner, shall be afforded a hearing before the food license

review board within 10 working days of such petition.

b. Whenever the commissioner finds unsanitary or other conditions related to the operation of a food peddler which are in violation of this section, rules and regulations adopted by the commissioner, state statutes or rules promulgated by an agency of the state, and the violations, in the commissioner's opinion, constitute a substantial hazard to the public health, safety and welfare, the commissioner may, without warning, notice or hearing, issue a written order to the permit holder, operator or employee in charge of the food peddler operation citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken. If the commissioner deems it necessary, the order shall state that the permit is immediately suspended and all food service operations are to be immediately discontinued. Any person to whom such an order is issued shall immediately comply therewith, but upon written petition to the commissioner, shall be afforded a hearing before the food license review board within 10 working days of such petition. Failure to allow an inspector immediate access to determine whether such ground exists shall be grounds for suspension.

c. For serious or repeated violations of any of the requirements of this section, or for interference with the commissioner in the performance of his or her duties, a permit may be revoked after an opportunity for a hearing has been provided by the food license review board. Prior to such action, the commissioner shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation, and advising that the permit shall be revoked at the end of 5 working days following service of such notice, unless the permit holder files with the commissioner a request for a hearing within such 5-day period.

d. The hearings provided for in this section shall be conducted by the food license review board at a time and place designated by the commissioner. Based upon the record of such hearing, the commissioner shall be charged with enforcing the decision of the board. The commissioner shall furnish the permit holder with a written report of the hearing decision.

e. No person, association or corporation may operate after a permit suspension or revocation unless the suspension is released in writing or the revocation is not upheld by the food license review board or court.

7. PERMITS AND IDENTIFYING DEVICES NOT TRANSFERABLE. Permits and permit identifying devices shall be nontransferable except upon order of the commissioner of health. Any food peddler selling, giving away or exchanging any permit or permit identifying device, or any food peddler obtaining a permit by misrepresentation, or improperly registering their name or address shall be subject to the fines provided for in sub. 10.

7.5. PROHIBITED AND REQUIRED ACTS. a. A food peddler shall not:

a-1. Sell food between the hours of 9 p.m. and 6 a.m. the following morning. This prohibition shall not apply on Memorial Day, Juneteenth, the 3rd and 4th of July, Labor Day, on city streets adjacent to State Fair Park during the run of the Wisconsin State Fair or during any other specific dates specified by the common council by resolution.

a-2. Block or restrict an individual's access to a business or residential doorway.

a-3. Block or restrict pedestrians on the public way.

a-4. Make any comment, request, suggestion or proposal which is obscene, lewd, lascivious, profane, filthy or indecent.

a-5. Sell food door-to-door except as provided under s. 68-4.

b. A food peddler shall:

b-1. Make all sales on the public way directly from a pushed, peddled, pulled or motorized vehicle or a carried container.

b-2. Keep all perishable foods in one of the following ways:

b-2-a. Frozen.

b-2-b. Refrigerated at 40° F or lower by means of mechanical refrigeration.

b-2-c. Heated and maintained at 150° F.

b-3. Provide a scale for items that are sold by weight and weighed at the time of sale. The scale shall be approved and licensed under ss. 60-91 and 82-14.

c. Comply with all parking regulations under ss. 105-56 and 115-45.

8. SALE OF UNWHOLESOME FOOD PROHIBITED. No food peddler shall sell any food or food product that is unwholesome or tainted, or that is unclean, or that has been handled in an unclean manner, or has been

exposed to unclean or contaminating things or conditions, or contrary to any rules or regulations adopted by the commissioner of health.

8.5 SALE OF SODA WATER. Soda water shall be sold in single service cups or aluminum cans only.

9. RULES AND REGULATIONS. The commissioner of health is authorized to make and adopt the written rules and regulations as may be necessary for the proper enforcement of this section. The commissioner of health shall file a certified copy of all rules and regulations which he may adopt with the city clerk, and a certified copy of such rules and regulations shall also be on file in the office of the commissioner of health. Such rules and regulations shall have the same force and effect as the provisions of this section, and the penalty for violations thereof shall be the same as the penalty for violations of this section as hereinafter provided.

9.5. PEDDLERS ARE AGENTS OF PERMIT HOLDERS. Whenever a business, organization or individual holds a food peddler's permit and individual peddlers make sales under the authority of that permit, each such individual peddler is an agent of that business, organization or individual for purposes of those sales. Any violation of this section by an agent shall be imputed to the business, organization or person that holds the food peddler's permit under which the agent's sales are made.

10. PENALTIES. a. Any person who shall sell any food product from any vehicle or any carried container as described in this section without having first received a permit in accordance with the provisions of this section, or who shall violate any of the other provisions of this section, except sub. 7.5, shall be subject to penalty as set forth in s. 61-8.

b. A person who violates sub. 7.5 shall be subject, at the discretion of the court, to any or all of the following penalties:

b-1. A forfeiture of not less than \$20 nor more than \$200 for each violation.

b-2. A suspension of the identifying device described under sub. 4 for not less than 10 days nor more than 30 days, or a revocation of the identifying device for the remainder of its term.

b-3. A suspension of the food peddler's license for not less than 10 days nor more than 30 days, or a revocation of the food peddler's license for the remainder of its term.

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c. At the discretion of the court, a penalty under par. b may be imposed as follows:

c-1. A penalty may be imposed on an agent.

c-2. Whenever the court finds that the business, organization or person that holds the food peddler's permit under which the agent's sales are made has failed to properly supervise the agent, a penalty may be imposed on the business, organization or person.

c-3. A penalty as described under subds. 1 and 2 may be imposed on both an agent and the business, organization or person that holds the food peddler's permit under which the agent's sales are made.

**LEGISLATIVE HISTORY
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Abbreviations:

am = amended
cr = created

ra = renumbered and amended
rc = repealed and recreated

m = renumbered
rp = repealed

<u>Section</u>	<u>Action</u>	<u>File</u>	<u>Passed</u>	<u>Effective</u>
74-1-1	cr	971622	2/10/98	2/27/98
74-1-1-a	m to 74-1-1.5-b	971622	2/10/98	2/27/98
74-1-1-b	m to 74-1-1.5-c	971622	2/10/98	2/27/98
74-1-1-c	m to 74-1-1.5-d	971622	2/10/98	2/27/98
74-1-1.5-a	cr	971622	2/10/98	2/27/98
74-1-1.5-c	am	971622	2/10/98	2/27/98
74-1-2-a	am	881465	11/18/88	12/9/88
74-1-2-a	am	930209	7/6/93	7/23/93
74-1-2-b	am	881803	1/24/89	2/11/89
74-1-2.2	cr	971622	2/10/98	2/27/98
74-1-2.5	cr	960171	6/25/96	7/13/96
74-1-3-a	am	881803	1/24/89	2/11/89
74-1-3-a	am	951346	1/23/96	2/9/96
74-1-3-b	am	881803	1/24/89	2/11/89
74-1-3-b	am	951346	1/23/96	2/9/96
74-1-3-c	am	881803	1/24/89	2/11/89
74-1-3-c	am	971622	2/10/98	2/27/98
74-1-4	am	971622	2/10/98	2/27/98
74-1-4.5	cr	960499	7/12/96	7/31/96
74-1-6	rc	971622	2/10/98	2/27/98
74-1-7.5	cr	950423	11/6/95	11/14/95
74-1-7.5	rc	971622	2/10/98	2/27/98
74-1-7.5-a-1	m to 74-1-7.5-a-2	000799	11/28/2000	12/15/2000
74-1-7.5-a-1	cr	000799	11/28/2000	12/15/2000
74-1-7.5-a-2	m to 74-1-7.5-a-3	000799	11/28/2000	12/15/2000
74-1-7.5-a-3	m to 74-1-7.5-a-4	000799	11/28/2000	12/15/2000
74-1-7.5-a-4	m to 74-1-7.5-a-5	000799	11/28/2000	12/15/2000
74-1-8.5	cr	901095	11/6/90	11/23/90
74-1-9.5	cr	950423	11/6/95	11/14/95
74-1-10	am	950423	11/6/95	11/14/95

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